BAIL SLIP

The Appellant/Accused was directed to be released on bail on and by the order of this Court dated 12.2.2004 made in Crl.MP.No.1494/2004 in Crl.R.C.No.231/2004 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.6.2006

CORAM :

THE HONOURABLE MR. JUSTICE S.ASHOK KUMAR

Crl.R.C.No.231 OF 2004

Ponnuswamy ... Petitioner

Versus

Inspector of Police,
C.C.I.W.,
Vellore,
(Crime No.2 of 1992) ... Respondent

This Criminal Revision Petition is filed under Section 397 read with 401 Cr.P.C. against the judgment of the Judicial Magistrate, No.II, Vellore dated 14.9.1999 in C.C.No.11 of 1997 and confirmed in appeal by the judgment dated 28.11.2003 of the Additional District & Sessions Judge, Vellore, (Fast Track Court, Vellore) Vellore District, in Criminal Appeal No.91 of 1999.

For Petitioner : Mr.T.S.Gopalan
For Respondents : Mr.N.Kumanan, Government Advocate (Crl.Side)

ORDER

This revision is directed against the conviction of the petitioner for the alleged offences under Section 408 and 477(A) (3 counts) I.P.C. sentencing him to undergo nine months rigorous imprisonment for each count and directed the sentence to run concurrently, which was confirmed in appeal by the learned Additional District & Sessions Judge, Fast Track Court, Vellore.

2. The brief facts of the case are as follows:

The petitioner was working as an attender in the Marudhadu Primary Agricultural Co-operative Bank. When he was employed during 27.2.1987 to 31.12.1991, it was alleged that the accused misappropriated cash and stock to a total value of Rs.21,050.10/- and prepared false records and thus committed the offence as alleged.

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3. On behalf of the prosecution, P.W.1 to P.W.14 were examined and Exhibits P.1 to P.32 were marked. On behalf of the accused, no witness was examined and no document was marked.

4. On a consideration of the oral and documentary evidence, the learned Judicial Magistrate No.II, Vellore convicted the petitioner to undergo rigorous imprisonment for nine months on each count for the offence under Sections 408 and 477A (3 counts) and to suffer the imprisonment concurrently.

5. The co-accused A.2 was acquitted in the trial. The petitioner preferred an appeal in Criminal Appeal No.91 of 1999 before the learned Additional District & Sessions Judge, Fast Track Court, Vellore, who heard the appeal and dismissed the same, confirming the conviction and sentence. Hence, this revision.

6. Mr.V.Karthick, learned counsel appearing for the petitioner would submit that though there are certain grounds to agitate for the acquittal of the accused, he is restraining his arguments to the sentence imposed on the petitioner on the ground that even assuming that there are misappropriations said to have been caused by the petitioner, the entire amount has been repaid by the petitioner even before the judgment was delivered by the trial Court.

7. He has produced documents to show that on 18.3.1993, the petitioner paid Rs.7,770/-; on 7.4.1994 paid Rs.7522/- and on 18.2.1998 paid Rs.5754/-, totalling a sum of Rs.21,046/-, but that judgment was delivered only on 14.9.1999. P.W.11 a clerk of the society would admit that because of the alleged misappropriation, there was no loss caused to the society because alleged loss has been made good by the petitioner.

8. The trial Court also at paragraph 33 of its judgment has confirmed that the petitioner has already repaid the entire amount.

9. Mr.V.Karthick, learned counsel appearing for the petitioner pressed into service two judgments of this Court reported in (1990 L.W. Crl 172) K.SOMASUNDARAM V. STATE REP. BY INSPECTOR OF POLICE and (2000 (3) MWN (Cr) 133) SHANMUGAM & OTHERS V. STATE OF TAMIL NADU REP. BY INSPECTOR OF POLICE, CCIW (CID).

10. In (1990 L.W. Crl 172), the learned brother Arunachalam J. has held as follows:

> 8. On facts, the entrustment having been established and the retention, which was deemed to be dishonest in view of the production of Exhibits P.18 to P.22, the guilt of the petitioner has to be taken to have been established, though only for an offence under S. 406, I.P.C. Learned counsel for the petitioner fervently pleads that the provisions of the Probation of Offenders Act, Central Act XX of 1958, could be invoked in view of the petitioner having made

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good the amount along with interest long before the lodging of the complaint. It appears that the petitioner as well as his father were associated with this Co-operative Society for several years and the record had been clean. Unfortunately, the petitioner had involved himself in the commission of this offence in 1975-76, 13 years have elapsed since the commission of the offence and the fact remains that the Society has not lost anything, for, the entire amount plus interest has been paid by the petitioner to the society. The offence under S.406 I.P.C. is punishable with imprisonment which may extend to three years, or with fine, or with both. On the facts of this case, there will be no impediment in invoking the provisions of the Probation of Offenders Act. Section 4 of the Probation of Offenders Act, Central Act XX of 1958, permits this Court to release a person on probation of good conduct if the offence for which he is convicted is not punishable with death or imprisonment for life and such a course is deemed expedient taking into consideration the nature of the offence and the character of the offender. I am satisfied that the petitioner could be dealt with under the provisions of the Probation of Offenders Act.

9. In that view, while modifying the conviction imposed on the petitioner under Section 409 I.P.C. into one under Section 406, I.P.C., I set aside the sentence imposed on him on the first charge and direct him to be released on his executing a bond, within eight weeks from today in a sum of Rs.2,000/- with one surety for a like sum to the satisfaction of the Sub-Divisional Judicial Magistrate, Tiruppur, to keep the peace and be of good behaviour for a period of six months and to appear and receive sentence when called upon during such period. The convictions and sentences imposed on the petitioner for offences under S.467 and 477-A, I.P.C. are set aside and the petitioner is acquitted of those charges. The fine amounts, if paid by the petitioner, shall be refunded to him. The Criminal Revision Case is partly allowed.

11. Following the judgment, the learned brother R.Balasubramanian, J. in (2000 (3) MWN (Cr) 133) as held as follows:

Inasmuch as the sum stated to have been misappropriated had been reimbursed by the revision petitioner/accused, I am of the opinion that interest of justice would be met by letting off the convicted revision petitioner under the Probation of Offenders Act instead of sending him to prison. There are precedents to this effect namely 1990 L.W. (Crl.) 172 and 1991 (1) L.W. (Crl.) 355. Accordingly, while

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confirming the conviction of the revision petitioner in Crl.R.C.935/96 on the lines indicted earlier, I am inclined to invoke the provision of the Probation of Offenders Act. Accordingly, while modifying the conviction imposed on the revision petitioner in Crl.R.C.No.935/96 on the lines indicted above. I set aside the sentence imposed on him for the offences referred to earlier and direct him to be released on his executing a bond for a sum of Rs.10,000/- with one surety each for a likesum to the satisfaction of the learned Judicial Magistrate No.1, Madurai within eight weeks from today; to keep peace and be of good behaviour for a period of six months and to appear and receive the sentence when called for during the said period.

12. The facts and circumstances cited in the above two cases are almost similar to the facts of this case. Apart from the fact that the petitioner has paid the entire amount said to have been misappropriated and he had already suffered 29 days at the pre-trial stage before he was enlarged on bail by this Court.

13. In the above circumstances, the conviction of the petitioner is set aside and he is directed to be released under Section 4 of the Probation of Offenders Act and he shall execute a bond within four weeks from today in a sum of Rs.5,000/- with one surety for a like sum to the satisfaction of learned Judicial Magistrate No.II, Vellore to keep the peace and be of good behaviour for a period of six months and to appear and receive sentence when called upon during such period. The conviction and sentence imposed on the petitioner under Sections 408 and 477 A (3 counts) are set aside and the petitioner is acquitted of those charges.

Hence, this Crl.R.C. is allowed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Additional District & Sessions Judge,
   (Fast Track Court), Vellore District,

2. The Principal Sessions Judge, Vellore.

3. The Judicial Magistrate, No.II, Vellore

4. -do- through the Chief Judicial Magistrate, Vellore.

5. The Superintendent, Central Prison, Vellore.

6. The Public Prosecutor, High Court, Madras.

7. The Inspector of Police, CCIW, Vellore.

+ 1 CC To Mr. T.S.Gopalan & Co. SR NO.27431

Crl.R.C.No.231 OF 2004
28.6.2006

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